No. 82-1054

IN THE

Supreme Court of the United States

October Term, 1982

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL NO. 988,
Petitioner,

v.

NORMAN E. EDWARDS and BOBBY WAYNE MIZE, SEA-LAND SERVICE, INC.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENT SEA-LAND SERVICE, INC.

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STATEMENT OF THE CASE

In or about the fall of 1978 respondent Sea-Land Service Inc. (Sea-Land),[1] in anticipation of a move of its Houston, Texas port facilities some 20 miles to a new location at Barber's Cut undertook discussions concerning the move with petitioner International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America, Local Union 988 (Teamsters) and the International Longshoremen's Association AFL-CIO (ILA).

Members of the Teamsters had been performing yard work at the old Houston Sea-Land port facilities under an original local work assignment dating back to the 1950's. That local Houston work assignment was in conflict with an agreement dating from the early 1960's under which similar port facility work in a wide range of ports was assigned to members of the ILA. In the 1960's it was agreed that members of the Teamsters union would continue to be assigned work at the old Houston facility but that Teamster jurisdiction would dissolve if Sea-Land ever moved to other facilities.

On or about January 1, 1979 Teamsters Local 988, the International Longshoremen's Association, and Sea-Land entered into an agreement implementing prior agreements whereby the jobs of Gate Checkers and Terminal Yard Hostlers were to be represented by the International Longshoremen's Association at Sea-Land's new facility rather than by Teamsters. Further, the workers at the old Houston facilities who were members of the Teamsters unit would be admitted to membership in the ILA, but

1. In accordance with Rule 28(1) of the Rules of the Supreme Court of the United States, Respondent Sea-Land Service, Inc., a Delaware Corporation, avers that it is a wholly owned subsidiary of Sea-Land Industries Investments, Inc., which in turn is a wholly owned subsidiary of R. J. Reynolds Industries, Inc. However, R. J. Reynolds Industries, Inc. has not participated in this litigation.

without seniority credit for the years spent working at Sea-Land while members of the Teamsters Union.

Respondents, Norman E. Edwards and Bobby Mize (Edwards and Mize), were employed as yard employees by Respondent Sea-Land in Houston and represented by Petitioner Teamsters. They were informed that the jobs at the Houston facility would be assigned to workers represented by the International Longshoremen's Association and that they were being laid-off in accordance with the collective bargaining agreement between Sea-Land and the Teamsters—to be placed on the seniority list of the ILA. Edwards and Mize filed grievances on January 2, 1979 with the Teamsters Union alleging that they were unlawfully terminated in violation of the Teamsters collective bargaining agreement.

The grievances were processed through the grievance procedure and on April 1, 1980, Edwards and Mize were advised that the Joint Committee had denied their grievances. More than a year later on April 21, 1981, plaintiffs filed a suit in the United States District Court for the Southern District of Texas alleging Sea-Land violated the collective bargaining agreement and that the Teamsters Union breached its duty of fair representation to them.

Sea-Land and the Teamsters each filed a Motion to Dismiss alleging among other things that the Complaint was barred because it exceeded the applicable time periods contained in either the Texas General Arbitration Act or the Federal Arbitration Act. *United Parcel Service v. Mitchell*, 451 U. S. 56 (1981). The District Court, relying on *Mitchell*, granted both Motions to Dismiss on the basis that the 90 day time period in the Texas General Arbitration Act or the three month period in the Federal Arbitration Act barred plaintiffs' claims.

The District Court did not reach the arguments of Sea-Land that individual union members cannot maintain

lawsuits for personal damages incurred because of changes in labor agreements if the collective bargaining agreements are reasonable and if members are fairly represented.

Edwards and Mize appealed the District Court's decision to the U. S. Court of Appeals for the Fifth Circuit. The Fifth Circuit, considering the time issue, reversed and remanded the case back to the District Court. The Court stated that the 90 day time period in the Texas General Arbitration Act did not apply. The Federal Arbitration Act was held not to be applicable. Instead the Fifth Circuit Court allowed the lawsuit to proceed as not time barred.

On November 22, 1982, following the remand of this case to the District Court, but prior to the Teamsters' filing of its Petition for a Writ of Certiorari, Sea-Land filed in the District Court a Motion to Dismiss or Alternatively Motion for Summary Judgment. In this Motion, Sea-Land argues pursuant to the *Steelworkers Trilogy*[2] and its progeny, that the scope of the District Court's review of this arbitration award is quite limited and that where, as here, the award is based upon and draws its essence from the language of the parties' contract, it must be upheld. In further support of its Motion, Sea-Land argues that all times relevant hereto, and particularly when negotiating the agreements which gave rise to this dispute, both the Teamsters and Sea-Land acted within the "wide range of reasonableness" recognized by the Court in *Humphrey v. Moore*, 375 U. S. 335, 349 (1964), and that accordingly they are entitled to summary judgment in their favor as a matter of law.

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2. *United Steelworkers of America v. American Manufacturing Co.*, 363 U. S. 564 (1960), *United Steelworkers of America v. Warrior and Gulf Navigation Company*, 363 U. S. 574 (1960), *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U. S. 593 (1960).

SUMMARY OF ARGUMENT

Since Section 301 of the Labor Management Relations Act does not contain its own period of limitations, the federal courts in suits brought under that section must borrow a period of limitations that complies with federal labor policy. The three month Federal Arbitration Act period of limitations for suits to vacate arbitration awards or the ninety-day period of limitations in the Texas General Arbitration Act for suits to vacate arbitration awards are the most appropriate to apply since Edwards and Mize's action seeks to overturn an adverse arbitration award. Moreover, the short periods of limitations of either the Federal Arbitration Act or Texas General Arbitration Act comports with the federal labor policy of encouraging the rapid and final disposition of labor disputes.

ARGUMENT

I. The Fifth Circuit Court of Appeals Should Have Applied the Three Month Time Period for Actions to Vacate Arbitration Awards Contained in § 12 of the Federal Arbitration Act to Bar the Action Against Sea-Land

A. Application of the Federal Arbitration Act Period Provides Uniformity and Consistency

In actions brought under the Labor Management Relations Act, 29 U. S. C. A. § 141 et seq., this Court has expressed a desire for uniformity and consistency in order to mold a national labor policy. *Textile Workers Union v. Lincoln Mills,* 353 U. S. 448 (1957); *Teamsters Local 174 v. Lucas Flour Co.,* 369 U. S. 95 (1962). Uniformity and consistency can best be achieved by applying a single federal statute rather than a myriad of differing state statutes.

This Court in its landmark decision in *Lincoln Mills* held that the substantive law to apply in § 301 lawsuits is federal law which the courts must fashion from the policy of national labor laws. State law would be applied only if compatible and in furtherance of federal labor policy.

In expounding upon its decision in *Lincoln Mills,* this Court in *Lucas Flour* stated the following:

> . . . incompatible doctrines of local law must give way to principles of federal labor law. . . . The dimensions of § 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute. Comprehensiveness is inherent in the process by which the law is to be formulated under the mandate of *Lincoln Mills,* requiring issues raised in suits of a kind covered

by § 301 to be decided according to the precepts of federal labor policy.

More important, the subject matter of § 301(a) "is peculiarly one that calls for uniform law." *Pennsylvania Railroad Co. v. Public Service Commission*, 250 U. S. 566, 569 (1919).

369 U. S. at 102, 103.

It is clear that this Court has mandated a need for uniformity and comprehensiveness in judicial decisions involving § 301 lawsuits. Such uniformity and comprehensiveness can only be achieved by application of a single federal period of limitations not by application of state statutes which contain a variety of time periods.

The Fifth Circuit's application of a four year period of limitations to the claim against the employer in the case at hand frustrates the speedy and final resolution of labor disputes and deprives the union and employer the benefits of their collectively negotiated grievance and arbitration procedure.

B. The Three Month Time Period in the Federal Arbitration Act Complies With the Federal Labor Policy of Promoting Speedy and Final Resolution of Labor Disputes

It is a basic tenet of federal labor policy, as emphasized by this Court on several occasions, to encourage arbitration as a speedy and final resolution of labor disputes. *United Steelworkers of America v. American Manufacturing Co., supra; United Steelworkers of America v. Enterprise Wheel and Car Corp., supra; United Steelworkers of America v. Warrior and Gulf Navigation Co., supra; Hines v. Anchor Motor Freight, Inc.*, 424 U. S. 554 (1976).

A cornerstone of the federal pro-arbitration policy is the application of short time periods of limitation to suits

to vacate arbitration awards. *United Parcel Service v. Mitchell, supra.* The *Mitchell* Court stated as follows:

> This system, with its heavy emphasis on grievance, arbitrations, and the "law of the shop," could easily become unworkable if a decision which has given "meaning and content" to the terms of an agreement and even affected subsequent modification of the agreement, could suddenly be called into question as much as six years later.
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> 451 U. S. at 59.

The three month time period for suits to vacate arbitration awards contained in the Federal Arbitration Act complies with the federal policy of promoting speedy and final resolution of labor disputes.

The Fifth Circuit in rejecting the application of the Federal Arbitration Act in the case at hand, *Edwards v. Sea-Land Service, Inc.*, 678 F. 2d 1276 (5th Cir. 1982), relied heavily on *United Automobile Workers v. Hoosier Cardinal Corporation*, 383 U. S. 696 (1966) citing it for the proposition that the most appropriate state statute should be applied. However, the *Hoosier Cardinal* Court expressly limited its holding to actions for damages for a breach of contract suit as follows:

> The present suit is essentially an action for damages caused by an alleged breach of an employer's obligation embodied in a collective bargaining agreement. Whether other § 301 suits different from the present one might call for the application of different periods of timeliness, we are not required to decide, and we indicate no view whatsoever on that question.
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> 383 U. S. at 705, n. 7.

The *Hoosier Cardinal* Court thus left open the application of other time periods, including the Federal Arbi-

tration Act, to suits to vacate arbitration awards such as the matter at hand. The *Mitchell* Court did not consider applying the time period of the Federal Arbitration Act because the grant of certiorari was narrowly limited to the issue of which state time period should be borrowed, not whether such borrowing was appropriate. *Mitchell, supra,* at 63 n. 2. However, after stating that it would apply a short time period to the action to vacate an arbitration award, this Court referred to the Federal Arbitration Act as being consistent with the policy of providing for short time periods. *Mitchell supra,* at 63 n. 5.

II. The Ninety-Day Period of Limitations for Suits to Vacate Arbitration Awards in the Texas General Arbitration Act Should Have Been Applied to Bar the Claim Against Sea-Land

If the Court determines that neither the three month statute of limitations contained in the Federal Arbitration Act, 9 U. S. C. § 12 (1976), nor any other federal statute of limitations is applicable to Respondents' claims against Sea-Land, the Court must then decide which state statute setting a time period should be borrowed and applied to the facts of this case. *United Parcel Service v. Mitchell, supra.* The quest is for that time period which is "the most appropriate one provided by state law." *Johnson v. Railway Express Agency, Inc.,* 421 U. S. 454, 462 (1975). The "appropriateness" of state timeliness statutes "depends upon . . . the nature of the *federal* claim and the *federal* policies involved." *Mitchell, supra* at 60, 61 (emphasis added). Because of the paramount importance of the federal policies involved, federal courts, when applying state statutes of timeliness to federal claims, "borrow only the chronometric aspects and not the procedural or substantive nuances of the law of the forum." *Wolf v. Frank,* 477 F. 2d 467, 475 (5th Cir. 1973), *cert. denied,* 414 U. S. 975 (1973).

In suits such as this one brought under § 301(a) of the Labor Management Relations Act, 29 U. S. C. § 185(a) (1976) ("LMRA"), this Court has repeatedly recognized that "one of the leading federal policies in the area is the 'relatively rapid disposition' of labor disputes." *Mitchell, supra* at 63, 64.

In this case, decided after *Mitchell,* the Fifth Circuit refused to apply the ninety day period of limitations for actions to vacate arbitration awards contained in the Texas Arbitration Act, Tex. Rev. Civ. Stat. Ann., art. 237B (Vernon 1979), and ruled that Texas' four year "catch-all" statute of limitations,[3] applied to employees' suits against their employers under § 301 of the LMRA.[4] In so doing, the Fifth Circuit failed to give due consideration to this Court's controlling decision in *Mitchell,* and to the important policy considerations behind that decision. In addition, the Fifth Circuit's holding is based on an erroneous analysis of the Texas statutes of limitations.

The Fifth Circuit refused to apply the ninety day time period contained in the Texas Arbitration Act because of an exclusion therein for "any collective bargaining agreement between an employer and a labor union." Tex. Rev. Civ. Stat. Ann., art. 224(a) (Vernon 1979). In so doing, the court placed undue emphasis on the "substantive nuances" of the statute and disregarded its "chronometric aspects" when it is the latter, not the former, which should have been the focus of its inquiry. *Wolf v. Frank, supra* at 475.

The Fifth Circuit applied the four year time period contained in Texas' catch-all statute of limitations because

3. Tex. Rev. Civ. Stat. Ann., art. 5529 (Vernon 1979).

4. The Fifth Circuit also held that employees' claims against their unions for breach of their duty of fair representation are governed by Texas' two year tort statute of limitations, Tex. Rev. Civ. Stat. Ann., art. 5526 (Vernon 1979).

of its conclusion that "Texas has not assigned a specific limitation to arbitration actions arising from collective bargaining agreements."

Texas, however, does have arbitration statutes which are applicable to arbitrations arising out of the collective bargaining process. See Tex. Rev. Civ. Stat. Ann., arts. 239 et seq. Under conditions set forth therein, these arbitration statutes can be applied to "any grievance or dispute of any nature, growing out of the relation of employer and employees" and they expressly provide for the involvement in the dispute of one or more "labor organizations." Moreover, the statutes provide a specific time period for actions to vacate arbitration awards involving disputes between employers and employees or labor organizations. Under Articles 248 and 249 such actions must be filed within "ten days." This, then, appears to be the reason for the exclusion of matters pertaining to collective bargaining from the Texas General Arbitration Act. Texas' policy supports an even more rapid resolution of arbitrations growing out of the employment relationship than it does arbitrations in other contexts. In this regard, Texas' policy is fully consistent with the overriding federal policy (as discussed in *Mitchell*). The Fifth Circuit's application of a four year statute of limitations to such cases frustrates both.

Pursuant to this Court's decision in *Mitchell*, this case should be characterized as an action to vacate an arbitration award. The Texas Arbitration Act is generally applicable to such cases. Its ninety day time period to vacate arbitration awards is in harmony with federal policy favoring speedy resolution of labor disputes and finality in decisions regarding same. The Texas Arbitration Act's limited exclusion of matters concerning collective bargaining is based on the existence of additional

statutes which specifically deal with such cases and are even more consistent with federal policy. Accordingly, the Fifth Circuit if it did not apply the three month time period contained in the Federal Arbitration Act should have applied either the ninety day time period contained in Article 237B of the Texas Arbitration Act or the ten day time period contained in Articles 248 and 249 of the Texas Act to Respondents' claims against Sea-Land.

III. A Decision by the Supreme Court Would Resolve Conflict Among the Circuit Courts of Appeal as to the Choice of the Applicable Time Periods to Apply to Suits to Vacate Arbitration Awards

Several Circuit Courts of Appeal have issued conflicting decisions as to the choice of the applicable time periods to suits to vacate arbitration awards.

The First Circuit in *Sear v. Cadillac Auto Co. of Boston*, 654 F. 2d 4 (1st Cir. 1981) applied the 30-day state time period for suits to vacate arbitration awards to bar the claim against the employer but left open which time period would apply to the union. In *McNutt v. Airco Industrial Gases Division*, 687 F. 2d 539 (1st Cir. 1982), the First Circuit took the same position as in *Sear*.

The Second Circuit in *Flowers v. Local 2602 of United Steelworkers of America*, 671 F. 2d 87 (2d Cir. 1982) applied the 90-day state time period to vacate arbitration awards to bar the claims against the employer, but applied the three year state statute of limitations for malpractice to the claim against the union. Certiorari granted November 29, 1982, Docket No. 81-2408.

The Third Circuit in *Fedor v. Hy-grade Food Products Corporation*, 687 F. 2d 8 (3rd Cir. 1982) applied the Pennsylvania time period of 30 days to suits to vacate arbitration awards.

The Fourth Circuit in *Del Costello v. International Brotherhood of Teamsters*, — F. 2d — (4th Cir. 1982) applied the state 30 day time period for suits to vacate arbitration awards to bar both the claims against the employer and union. Certiorari granted November 29, 1982, Docket Number 81-2386.

The Fifth Circuit in the matter at hand *Edwards v. Sea-Land Service Inc., supra*, applied the Texas four year catch-all statute to the employer and the state two year tort statute of limitations to the union. However, subsequent to the *Edwards* case another panel of the Fifth Circuit in *Rigby v. Roadway Express, Inc.*, 680 F. 2d 342 (5th Cir. 1982) applied the Mississippi time period for suits to vacate an arbitration award, which is a variable time limit dependent upon the term of the Court, to both employer and union.

The Sixth Circuit in *Badon v. General Motors Corp.*, 679 F. 2d 93 (6th Cir. 1982) applied the six months time period for filing unfair labor practices in § 10(b) of the Labor Management Relations Act to bar both the claims against the employer and the union.

The Ninth Circuit in *Singer v. Flying Tiger Line, Inc.*, 652 F. 2d 1349 (9th Cir. 1981) held that it will apply the California 100 day time period for suits to vacate arbitration awards to bar both the claims against the employer and the union.

The Eleventh Circuit in *Hand v. International Chemical Workers*, 681 F. 2d 1308 (11th Cir. 1982) applied the Florida time period of 90 days for suits to vacate arbitration awards to the claim against the employer and the state 4 year statute of limitations for torts to the claim against the union.

Such a divergence of decisions among the Circuit Courts of Appeal is clearly not in compliance with this Court's mandate of uniformity.

IV. Granting of Certiorari Would Be Useful to Resolve Issues of Wide Public Interest, Especially as Such Matters Arising in the State of Texas. The Instant Case Is Amenable to Resolution by Remand to the District Court for Consideration on the Merits of the Claim

This Court has been granted broad discretion by Congress to determine whether to issue a Writ of Certiorari upon the petition of any party before or after rendition of judgment. 28 U. S. C. A. § 1254(1); *Immigration and Naturalization Service v. Stanisic*, 395 U. S. 62 (1969). Indeed, factors that the court may consider in ascertaining whether to grant certiorari have been listed in Rule 17 of the Rules of the Supreme Court of the United States.

> *Rule 17 Considerations Governing Review on Certiorari*
>
> 1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.
>
> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way in conflict with the decision

of another state court of last resort or a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

There are issues raised in the case at hand that have wide spread public interest and that were erroneously decided by the Fifth Circuit Court of Appeals. Additionally, there is a split over the issues among the Circuit Courts of Appeal. However, in the case at hand the matter can be resolved by a hearing on the merits of the case on remand to the District Court.

It is the position of Sea-Land that the case can be quickly and efficiently resolved on a motion for summary judgment in that the pleadings and records on file show that Edwards and Mize are not entitled to relief.

CONCLUSION

The Fifth Circuit Court of Appeals in the instant case should have ruled that this action was time barred by applying the three month period for vacation of arbitration awards as contained in the Federal Arbitration Act or the shortened time period contained in the Texas Arbitration Act. To fail to apply a time period from either the Federal or Texas Acts was reversible error. Further, there is widespread public interest in the question of applicable time limits to apply to actions to vacate labor arbitration awards and there is a conflict between Circuit Courts of Appeal as to the choice of the applicable time period to apply. However, in the instant case the

Fifth Circuit Court of Appeals had already remanded the case back to the United States District Court for the Southern District of Texas, Houston Division, before special leave was granted by the Supreme Court to an extended time period to file for Certiorari. Sea-Land believes the case is amenable to resolution in the District Court on its merits and indeed had filed a Motion to Dismiss or Alternatively a Motion for Summary Judgment before being ordered to comment on the Petition for Certiorari.

Respectfully submitted,

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